

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE PROVISION OF	)	ADMINISTRATIVE
ENHANCED SERVICES IN KENTUCKY	)	CASE NO. 338

O R D E R

This proceeding is being initiated by the Public Service Commission ("Commission") to investigate the provision of enhanced services in the state of Kentucky. For the purposes of this inquiry, the Commission will define enhanced services as defined by the Federal Communications Commission ("FCC") in 47 C.F.R., Section 64.702(a) which "refers to services offered over common carrier transmission facilities. . . which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."

The Commission takes notice of the long and involved history that the FCC has had and continues to have regarding examining the regulation of enhanced service providers. The 9th Circuit in People of California vs. FCC, 905 F.2d, 1217, 1246 (9th Circuit 1990) held "that the FCC has failed to carry its burden of showing that its preemption orders are necessary to avoid frustrating its regulatory goals." The court vacated the FCC Computer III orders

and remanded the case to the FCC. The FCC has since initiated a proceeding to reaffirm those aspects of Computer III order. In the Matter of: Computer III Remand Proceeding: Bell Operating Companies Safeguards and Tier 1 Local Exchange Companies Safeguards, FCC 90-416 (38073), Docket No. 90-623, 6 FCC Rcd 174 (1990). This matter is still pending. Additionally, pending at the FCC is In the Matter of: Petition for Declaratory Ruling That States and The Districts of Columbia Are Preempted From Imposing Entry and Exit Regulation and Tariff Requirements on Carrier/Affiliated and Noncarrier/Affiliated Enhanced Service Providers, DA 91-223. Other proceedings may be initiated at the FCC in the very near future relating to this same subject matter.

At present there is no preemption of state regulation. KRS 278.010(3)(e) states:

Utility means any person except a city who owns, controls, or operates or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation.

The Commission finds, prima facie, that the provision of enhanced services falls within the jurisdiction of KRS Chapter 278. All telecommunications utilities with tariffs on file at the Commission will be made parties to this proceeding.

IT IS HEREBY ORDERED that:

1. All entities listed in Appendix A are hereby made parties to this proceeding.


2. All parties shall, within 30 days of the date of this Order, provide a written response which itemizes any and all

enhanced services currently being provided. The following information shall be given for each enhanced service itemized: a generic description of the service being provided, the date service was first provided, and the current prices applicable to each service(s) itemized.

3. All parties shall, prior to offering the provision of any new enhanced service not currently being provided, give the Commission 30 days written notice including the information required above.

Done at Frankfort, Kentucky, this 1st day of August, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

\_\_\_\_\_  
Commissioner

ATTEST:

  
Executive Director

**APPENDIX A**

**APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN ADMINISTRATIVE CASE NO. 338 DATED 8/01/91**

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